

REMARKS

This Amendment, filed in reply to the Office Action dated April 19, 2007, is believed to be fully responsive to each point of rejection raised therein. Accordingly, favorable reconsideration on the merits is respectfully requested.

Claims 1-16 are all the claims pending in the application.

I. Claim Rejections under 35 U.S.C. § 103

Claims 1-3, 5 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Faupel et al. (U.S. Patent No. 6,975,899) in view of Hattori (U.S. Patent No. 4,422,457).

Claims 4, 6-11 and 13-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Faupel et al. (U.S. Patent No. 6,975,899) in view of Cline et al. (U.S. Patent No. 6,462,770).

The Examiner has withdrawn the prior rejection over the combination of Faupel and Walker. The Examiner maintains the prior art rejection over Faupel and Cline. Applicant respectfully submits the following arguments in traversal of the prior art rejections.

Applicant's invention relates to a fluorescent light indicating apparatus for imaging a target tissue. A feature of the imaging apparatus includes illumination of the target tissue by excitation light. One embodiment includes a contact detecting device to detect when a portion of an excitation light emitting component comes into contact with the target tissue. An additional embodiment of Applicant's invention includes a distance detecting device to correlate the distance between the excitation light emitting component and the target tissue.

The Examiner concedes that Faupel fails to teach a contact detecting device and the distance detecting device but cites Hattori to teach these features. Applicant submits that the rejection is not supported for at least the following reasons.

First, Hattori relates to a surgical laser apparatus disposed on an endoscope. In order to prevent activation of the laser, the laser remains deactivated until the operator brings his eye within a certain distance of the eyepiece for viewing the procedure. This distance is determined using an infrared distance detector. Accordingly, the detection of distance is made between the operator and the eyepiece. This does not explicitly or inherently disclose any determination of the distance between the light emitting device and the target tissue, or contact of the light emitting device with the target tissue as described by claims 1 or 5.

Second, the Examiner has provided no basis to combine the prior art references. The Examiner merely states that certain features are purportedly known. However, even assuming *arguendo* that the individual aspects of the invention are known, this is insufficient to support an obviousness rejection. Moreover, as stated above, the distance detecting device and contact detecting device as described by claims 5 and 1, respectively, are not demonstrated to be known in the art based on the Hattori reference. Therefore, claims 1 and 5 are patentable for at least these reasons. The remaining claims are patentable based on their dependency.

The Examiner rejects claims 4, 6-11 and 13-16 over the previously cited combination of Faupel and Cline. However, these claims are dependent upon independent claims 1 or 5. The Examiner concedes that Faupel alone does not teach the features of the independent claims. The Examiner has not indicated how Cline makes up for the deficiencies of Faupel. Because Cline relates to imaging using different forms of light sources, Cline does not make up for the deficiencies of Faupel which are conceded by the Examiner. Therefore, the rejection of claims 4, 6-11 and 13-16 are also improper.

Applicant adds claim 17 to describe the invention more particularly.

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No.: 09/888,444

Attorney Docket No.: Q65160

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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